IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6021 OF 2006.

Udayaraj Dharmaraj Thorne,
Mumbai. ... Petitioner.

V/s.

Dattu Dagadu Khade,
Navi Mumbai- 400 064. ... Respondent.

Bipin Joshi for the petitioner.

Shripad S. Murthy for the respondent.

CORAM: V.C.DAGA, J.

DATED: 28th September, 2006.

P.C.:

. The petitioner, in this petition, assails the order of the competent authority dated 13th December, 2005 affirmed by the order 12th July, 2006 passed in revision by the Additional Commissioner, Konkan Division, Mumbai; wherein petitioner is directed to hand over the vacant and peaceful possession of the suit premises to the respondent- licensor with consequential directions as contained in the impugned order.

The Facts :
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2. The factual matrix reveals that the respondent- licensor filed eviction application

bearing No.46/2000 before the Competent Authority under section 24 of the Maharashtra Rent Control Act, 1999 ("Act" for short) in respect of residential premises being Room No.225/8795, located at the Mazgaon Docks Kamgar Pragati Co-operative Housing Society Limited, Kannamwar Nagar No.1, Vikhroli (East), Mumbai- 400 083 ("Mazgaon Housing Society" for short).

3. The respondent- licensor is a member of the Mazgaon Housing Society. The aims and objects of the society are to provide accommodation to the members. Members are not permitted to let out the premises allotted to them by the society. The members are not even permitted to give their premises on leave and licence basis. The said society is employees' co-operative housing society. In substance, non-members are not permitted to occupy premises in the building of the said co-operative society.

4. The Society appears to have put prohibition in the bye-laws of the society for grant of premises on leave and licence. Petitioner was, therefore, prohibited from taking premises on leave and licence basis. The purported caretaker agreement (between the petitioner and the respondent) appears to have

been executed, to by-pass the bye-laws of the society; inter alia; mentioning that the petitioner has paid security deposit of Rs.25,000/- and the duration of agreement would be 11 (eleven) months with effect from 26th July, 1999 and monthly compensation fixed was in the sum of Rs.2,500/-. The petitioner, however, has denied his signature on the said agreement.

5. The respondent vide his notice dated 28th June, 2000 terminated life of the caretaker agreement and called upon the petitioner to hand over vacant and peaceful possession. The petitioner replied and contended that he had purchased the said flat for a sum of Rs.7 lakh and having paid entire consideration in cash he is not liable to vacate same. He, contended that he is in possession of the flat in his own rights as purchaser or owner thereof.

6. In order to contest the application under section 24 moved by the respondent before the competent authority and the revisional authority, the aforesaid contentions were reiterated by the petitioner. However, none of these contentions

were found favour with either of the authorities below. With the result, petitioner suffered adverse orders at the hands of the authorities below directing eviction of the petitioner from the suit premises.

7. The application under section 24 of the Act came to be allowed. Revision preferred against the said order by petitioner under section 46 of the Act came to be dismissed. The aforesaid orders are the subject matters of challenge in this petition filed under Article 227 of the Constitution of India.

Submissions :

8. The learned counsel appearing for the petitioner during the course of hearing raised contention contending that the alleged leave and licence agreement was not admissible in evidence. That the purported leave and licence agreement cannot be said to be a lawful leave and licence agreement. That the caretaker agreement cannot be elevated to the status of leave and licence agreement. That intention of the legislature behind section 24 of the Act is to see that valid

and lawful agreement is enforced and not camouflaged or manipulated document. He, thus, submits that the impugned orders are liable to be quashed and set aside.

Consideration :

9. Having heard learned counsel for the rival parties; having examined concurrent findings of fact recorded by the authorities below; and having considered the contentions raised in the petition as well as oral submissions, the petition is without any substance.

10. At the outset, it must be placed on record that though the petitioner is claiming to be in possession of the premises in question as a purchaser or prospective purchaser having paid entire consideration of Rs.7 lakh on 15th July, 2000, he did not take any step either to obtain registered sale-deed or document of transfer in his favour. He did not apply for securing membership of the Mazgaon Housing Society. He did not file suit for specific performance of agreement. He did not produce any evidence to show payment of Rs.7 lakh in cash. He did not

produce any income tax return to show payment of such huge amount. He could not demonstrate the source of money Therefore, in my view, the defence of payment of Rs.7 lakh in cash towards consideration for purchase of premises does not inspire judicial confidence. This defence has been rightly rejected by the authorities below.

11. It appears that there is prohibition on members of the society to grant premises on leave and licence basis to any other third person. As a matter of fact, how such prohibition will be legal is a different question, but, in order to make use of the property, instead of entering in to leave and licence agreement, it appears that a caretaker agreement was entered into. A caretaker agreement is nothing but can be treated as leave and licence agreement. Both the authorities below have rightly treated the same as leave and licence agreement. The agreement in question is not required to be a registered document in view of the law laid down by this Court in the case of **Raj Prasanna Kondur v. Arif Taher Khan**, 2005 (4) Bom.C.R. 383.

12. One of the contentions raised by the petitioner is that the agreement in question has not been proved and the said document does not bear signature of the petitioner. Firstly, the petitioner did not cite any handwriting expert as his witness. He neither obtained opinion of any handwriting expert nor could produce the same for consideration. The document in question was proved by the respondent in accordance with the provisions of the Evidence Act which is clear from the evidence on record.

13. Be that as it may, the said document was used by the petitioner for cross-examining the respondent. Once the document is used for cross-examination, then the said documents gets proved in view of the law laid down by the Apex Court in the case of **Ram Janki Devi v. Juggilal Kamlapat**, 1971(1) SCC 477.

14. The learned counsel for the petitioner has placed reliance on the judgment of Apex Court in the case of **Ameer Trading Corporation Ltd. v. Shapoorji Data Processing Ltd.**, JT 2003 (9) SC 109 and of this Court in the case of **Sunil Tukaram**

Bharadkar v. Santosh Gopichand Rane, 2006 (4) ALL MR 645; **F.D.C.Ltd. v. FMRAI**, AIR 2003 Bombay 371; and **Haren Krishnakumar Mehta v. Kamla Pribhdas Nebhanani**, AIR 2001 Bombay 187. Considering the facts and circumstances of the case, the reliance placed on the above cases by the petitioner is misplaced.

15. Needless to mention that sufficiency of evidence cannot be gone into in writ jurisdiction of this Court since this Court is not exercising appellate jurisdiction over rent Courts. This Court not being a Court of appeal, is not expected to reappreciate the evidence in view of the judgment of the Apex Court in the case of **Laxmikant Revchand Bhojwani v. Pratapsingh Mohansingh Pardeshi** (1995) 6 SCC 576 (para 9), wherein following observations were made:

> " Before parting with this judgment, we would like to say that the High Court was not justified in extending its jurisdiction under Article 227 of the Constitution of India. The Act is a special legislation governing landlord-tenant relationship and disputes. The legislature has, in its wisdom, not provided second appeal or revision to the High Court. The object is to give finality to the decision of the appellate authority. The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of

> hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes."

16. Bearing in mind the above observations of the Apex Court and considering the concurrent findings of fact recorded by the Courts below, it is very difficult to reach to the conclusion that the impugned order is a perverse order. Cogent reasons are given by the revisional Court while confirming the findings of fact recorded by the competent authority on each and every issues raised in the application. The revisional authority appreciated evidence and recorded findings of fact and affirmed the findings of facts recorded by the competent authority. No case is made out either in the petition or during the course of hearing to demonstrate that any piece of evidence was not taken into account by the authorities below or that any piece of evidence was misconstrued by them.

17. In the above view of the matter, considering the concurrent findings of fact, no

case is made out by the petitioner to interfere with the impugned order. The petition is devoid of any substance and is liable to be dismissed.

18. At this stage, learned counsel for the petitioner prays for stay of this order for a period of eight weeks from today for approaching higher Court. Learned Counsel for the respondent has no objection. Accordingly, petitioner is granted eight weeks time to vacate the suit premises, on furnishing undertaking to this Court within one week from today, to the effect that in the event of he failing before the higher Court, he shall vacate and hand over vacant and peaceful possession of the suit premises to the respondent without any obstruction. Undertaking should be signed by all the adult members of the family occupying suit premises.

19. In the result petition is dismissed in limine with no order as to costs.

(V.C.DAGA, J.)